



UNITED STATES PATENT AND TRADEMARK OFFICE  
DEPARTMENT OF COMMERCE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/579,846 05/26/00 WISNIEWSKI

R 17882-733

021971 0M02/0703  
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PALO ALTO CA 94304-1050

EXAMINER

FORD, J

ART UNIT	PAPER NUMBER
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3743

DATE MAILED:

07/03/01

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/579846	Wishnewski
Examiner	Art Unit	
Ford	3243	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-17 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claims 1-17 are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

#### **Priority under 35 U.S.C. § 119**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### **Attachment(s)**

15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	20) <input type="checkbox"/> Other: _____

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MPEP 2001.06(b) is deemed to require a complete listing of copending applications and/or prior art patents. See the enclosed Wisniewski et al. Patent maturing from a line of applications older than those referenced in the body of the current specification.

Applicant is required to disclose the existence of any published PCT applications corresponding to the aforementioned Wisniewski patent and/or any published foreign applications corresponding to the aforementioned Wisniewski patent.

Applicant is required to provide a copy of the prior art discussed on page 4, lines 24-25 of the specification is in response to this action.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11, drawn to a method of thawing biopharmaceuticals, classified in class 432, subclass 13.
- II. Claims 12-17, drawn to a heat exchange device with a vibrator, classified in class 165, subclass 47.

The inventions are distinct, each from the other because:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process such as freezing and thawing plastics or other non-biopharmaceutical.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

In addition, applicant must elect one of the following species.

This application contains claims directed to the following patentably distinct species of the claimed invention: first species of Figure 1,  
second species of Figure 2A,  
third species of Figure 2B,  
fourth species of Figure 3.,  
fifth species of Figure 4,

sixth species of Figure 5,  
seventh species of Figure 6A with motion 6B,  
eighth species of Figure 6A with motion 6C,  
ninth species of Figure 6A with motion 6D,  
tenth species of Figure 6A with unillustrated "three dimensional" motion,  
eleventh species of Figure 7,  
twelfth species - fifteenth species of Figures 9A-9D, respectively,  
sixteenth species of Figure 10A and 10B,  
seventeenth - twenty eighth species of Figures 11A-11L, respectively,  
twenty ninth - forty-fourth species of Figures 12A-12P, respectively,  
forty fifth - fifty second species of Figures 13A-13H, respectively,  
fifty third - sixty fourth species of Figures 14A-14L, respectively and an in-determinant  
number of unillustrated variants of the above sixty four species disclosed throughout the text of  
the specification but not illustrated.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for  
prosecution on the merits to which the claims shall be restricted if no generic claim is finally held  
to be allowable. Currently, no claims appear to be generic.

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Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

In the event one of the in-determinant number of unillustrated species is selected a proposed drawing correction is required meaningfully illustrating it, ~~in response to this action,~~

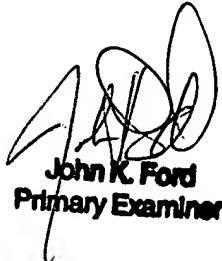
Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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Any inquiry concerning this communication should be directed to John Ford at telephone number (703) 308-2636.



John K. Ford  
Primary Examiner

J. Ford  
22 June 2001